

Mathew K. Higbee SBN 42755
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Suite 112
Santa Ana, CA 92705
(714) 617-8350
(714) 597-6559 facsimile
mhigbee@higbeeassociates.com

Counsel for Plaintiff,
Ben Coffman

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON**

BEN COFFMAN,

Plaintiff,

v.

ENCEPHALON, INC. d/b/a
<https://drjoedispenza.com>; and DOES 1
through 25 inclusive,

Defendants.

Case No. **2:20-cv-00911**

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

DEMAND FOR JURY TRIAL

Plaintiff, BEN COFFMAN (“Coffman” or “Plaintiff”), for his complaint against Defendants, ENCEPHALON, INC. d/b/a <https://drjoedispenza.com>; and DOES 1 through 25 inclusive, alleges as follows:

JURISDICTION AND VENUE

1. This is a civil action seeking damages and injunctive relief for copyright infringement under the Copyright Act of the United States, 17 U.S.C. §

101 *et seq.*

2. This Court has subject matter jurisdiction over Plaintiff's claims for copyright infringement pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1338(a).

3. This court has personal jurisdiction over Defendants because, Defendants conduct business in the State of Washington, Defendants' acts of infringement complained of herein occurred in the State of Washington, and Defendants have caused injury to Plaintiff within the State of Washington.

4. Venue in this judicial district is proper under 28 U.S.C. § 1391(c) and 1400(a) in that this is the judicial district in which a substantial part of the acts and omissions giving rise to the claims occurred. Alternatively, venue is also proper pursuant to 28 U.S.C. § 1400(b) because the Defendants reside and have a regular and established place of business in this judicial district.

PARTIES

5. Plaintiff Ben Coffman ("Plaintiff" or "Coffman") is a professional photographer by trade residing in the State of Oregon.

6. Defendant Encephalon, Inc. ("Encephalon," "Defendant," or "Defendants") is a Washington corporation with a principal place of business at 13115 Vail Cut Off Rd SE, Rainier, WA, 98576. A true and correct copy of the Washington Corporations and Charities Filing System Business Information page is attached hereto as Exhibit A.

7. On information and belief, Defendants own and operate the website, <https://drjoedispenza.com> (the “Website”).

8. On information and belief, Defendants also own and operate the following websites: youaretheplacebo.com, becomingsupernatural.com, and drjoegive2give.com.

9. A true and correct copy of the Website’s Privacy Policy is attached hereto as Exhibit B as proof of Defendants’ ownership of the websites.

10. On information and belief, Defendants post content to the Website in order to attract user traffic and to sell Dr. Joe Dispenza’s (“Dispenza”) books and other self-help materials, as well as to sell tickets to live self-help workshops taught by Dr. Joe Dispenza.

11. On information and belief, Defendants operate the Instagram account @drjoedispenza (the “Instagram Account”) and controls the content posted to the account. See <https://www.instagram.com/drjoedispenza/>.

12. Plaintiff is unaware of the true names and capacities of the Defendants sued herein as DOES 1 through 25, inclusive, and for that reason, sues such Defendants under such fictitious names. Plaintiff is informed and believes and on that basis alleges that such fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were proximately caused by the conduct of said Defendants.

Plaintiff will seek to amend the complaint when the names and capacities of such fictitiously named Defendants are ascertained. As alleged herein, “Defendant” shall mean all named Defendants and all fictitiously named Defendants.

13. For the purposes of this Complaint, unless otherwise indicated, “Defendant” includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogates, representatives and insurers of Defendants named in this caption.

FACTUAL ALLEGATIONS

14. Plaintiff Ben Coffman is a professional fine art photographer who specializes in landscape astrophotography, focused on Oregon and the Pacific Northwest.

15. Coffman’s works detail the collision between the natural and man-made worlds.

16. Coffman’s work has been showcased in multiple publications including the Sierra Club, Travel Oregon, Sky and Telescope, Bing, and Popular Photography. Coffman’s work has also been licensed for use in the National Geographic National Parks app.

17. Coffman is the sole author and exclusive rights holder to a photograph of the Portland, Oregon skyline at twilight (the “Image”). A true and correct copy of the original Image is attached hereto as Exhibit C.

18. A high level of skill and significant time is required to create images such as the one which is the subject of this Complaint.

19. Coffman registered the Image with the United States Copyright Office under registration number VAu 1-157-905.

20. A true and correct copy of the Copyright Registration certificate issued by the United States Copyright Office is attached hereto as Exhibit D.

21. On or about June 14, 2017, Coffman discovered that Defendants had used the Image in an event advertisement on their Website (the “Infringing Advertisement”). True and correct screenshots of the Infringing Advertisement featuring Coffman’s Image are attached hereto as Exhibit E.

22. Defendants additionally posted the Infringing Advertisement to the Instagram Account of Dr. Joe Dispenza, which, as of the date of this complaint, is still available on the Account. A true and correct screenshot of the Infringing Advertisement on the Instagram Account is attached hereto as Exhibit F.

23. On information and belief Defendants’ used the Image to sell tickets to one of Defendant’s Dr. Joe Dispenza live workshops located in Portland, Oregon.

24. Similar workshops regularly sell tickets for \$225-\$700 per person. See <https://drjoedispenza.com/pages/events>.

25. On information and belief, such workshops referenced above

regularly sell out.

26. On information and belief, Defendants made an unauthorized copy of Coffman's Image, and uploaded it to the server for Defendants' Website as well as the Dispenza Instagram Account.

27. Plaintiff never authorized Defendants to use the Image in any manner.

28. Defendants do not possess a license authorizing them to use the Image.

29. Defendants' use of the Image is undeniably commercial in nature.

30. On information and belief, Defendants obtained a monetary benefit from the use of the Image.

31. On information and belief, the Defendants knew that they did not have permission to use the Image on either Defendants' Website or Defendant Dispenza's Instagram Account, and willfully infringed Coffman's Image.

32. Defendants understand the liability that comes with using content that is not owned or licensed by the user and declares the following on the Website's Terms and Conditions page (<https://drjoedispenza.com/pages/terms-conditions>): "The content and all trademarks, service marks, logos, pictures, slogans, written material and other content and marks used at this store are the property of Encephalon, Inc. Encephalon, Inc. respects the intellectual property of

others, and we ask our shoppers to do the same. Failure to comply with US and other country's copyright, trademark and other laws, subject you to criminal and or civil penalties.”

FIRST CAUSE OF ACTION
COPYRIGHT INFRINGEMENT
17 U.S.C. § 101 *et seq*

33. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

34. Plaintiff did not consent to, authorize, permit, or allow in any manner the said use of Plaintiff's unique and original Image.

35. Plaintiff is informed and believes and thereon alleges that the Defendants willfully infringed upon Plaintiff's copyrighted Image in violation of Title 17 of the U.S. Code, in that it used, published, communicated, posted, publicized, and otherwise held out to the public for commercial benefit, the original and unique Image of the Plaintiff without Plaintiff's consent or authority, by using it in the Infringing Advertisement on Defendants' Website and Instagram Account.

36. As a result of Defendants' violations of Title 17 of the U.S. Code, Plaintiff is entitled to any actual damages pursuant to 17 U.S.C. §504(b), or statutory damages in an amount up to \$150,000.00 pursuant to 17 U.S.C. § 504(c).

37. As a result of the Defendants' violations of Title 17 of the U.S. Code,

the court in its discretion may allow the recovery of full costs as well as reasonable attorney's fees and costs pursuant to 17 U.S.C § 505 from Defendants.

38. Plaintiff is also entitled to injunctive relief to prevent or restrain infringement of his copyright pursuant to 17 U.S.C. § 502.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- For statutory damages against Defendants in an amount up to \$150,000.00 for each infringement pursuant to 17 U.S.C. § 504(c);
- For general and special damages against Defendants according to proof together with interest thereon at the maximum legal rate;
- For costs of litigation and reasonable attorney's fees against Defendants pursuant to 17 U.S.C. § 505;
- For an injunction preventing Defendants from further infringement of all copyrighted works of the Plaintiff pursuant to 17 U.S.C. § 502; and
- For any other relief the Court deems just and proper.

Dated: June 11, 2020

Respectfully submitted,

/s/ Mathew K. Higbee
Mathew K. Higbee, Esq.
SBN 42755
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
Santa Ana, CA 92705-5418
(714) 617-8350
(714) 597-6729 facsimile
Counsel for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff, Ben Coffman, hereby demands a trial by jury in the above matter.

Dated: June 11, 2020

Respectfully submitted,

/s/ Mathew K. Higbee
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